Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket No. 95-20
Bell Operating Company	)	
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-10
Review of *Computer III* and ONA	)	
Safeguards and Requirements	)	

REPORT AND ORDER

Adopted: February 24, 1999 **Released:** March 10, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

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I. INTRODUCTION

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to examine its rules every two years and repeal or modify those found to be no longer in the public interest.[1] Consistent with the directive of Congress, in 1998 the Commission undertook a comprehensive biennial review of the Commission's rules to promote "meaningful deregulation and streamlining where competition or other considerations warrant such action."[2]

2. In this Report and Order (*Order*) the Commission evaluates the utility of two of the regulatory safeguards we employ to prevent carriers that control local exchange and exchange access facilities from using their market power for anticompetitive purposes in the provision of intraLATA information services. The first safeguard we review is the requirement that Bell Operating Companies (BOCs) file service-specific Comparably Efficient Interconnection (CEI) plans, and obtain the Commission's approval of those plans, prior to initiating or altering their intraLATA information services.[3] The other safeguards we review

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as the "Communications Act" or the "Act." The Biennial Review of Regulations is codified at 47 U.S.C. § 161.

[2] *See 1998 Biennial Review of FCC Regulations Begun Early*, FCC News Release (rel. Nov. 18, 1997).

[3] In the *Non-Accounting Safeguards Order*, we concluded that all the services the Commission has previously considered to be "enhanced services" are "information services" as defined in the Act. *See Implementation of the*

are the Commission's network information disclosure requirements, which seek to prevent anticompetitive behavior by ensuring that Information Service Providers (ISPs) and others have timely access to information affecting interconnection to the BOCs', AT&T's, and other carriers' networks.[4]

3. Our consideration of these two issues is part of a larger proceeding to reexamine issues relating to the safeguards the Commission applies primarily to the provision of information services by the BOCs.[5] In January 1998, the Commission released a Further Notice of Proposed Rulemaking (*Further Notice*) in the *Computer III* proceeding to reevaluate our approach to structural and nonstructural safeguards in light of recent developments, among them a remand from the United States Court of Appeals for the Ninth Circuit (*California III*), and the enactment of the 1996 Act.[6] We also intended to reappraise our safeguards in

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Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21955, ¶ 102 (1996) (*Non-Accounting Safeguards Order).* Hence, we do not distinguish between an "Enhanced Service Provider" (ESP) and an "Information Service Provider" (ISP). For the sake of historical congruity, in this Memorandum Opinion and Order we use the term ESP in describing the background of the Commission's decisions in the *Computer II* and *Computer III* proceedings. (*See infra* notes 11 and 13 for citations to those proceedings). Elsewhere we use the synonymous ISP with no intended change in meaning.

[4] *See infra* n.149 (describing application of the all carrier network disclosure rule).

[5] In 1994, the United States Court of Appeals for the Ninth Circuit remanded the Commission's *Computer III* rules because the Commission had not adequately explained how its nonstructural safeguards offered adequate protection against discriminatory interconnection by the BOCs. *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995). In 1995, the Commission released a Notice of Proposed Rulemaking which sought comment on both the remand issue in *California III* and the effectiveness of the Commission's *Computer III* and Open Network Architecture (ONA) nonstructural rules in general. *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*). Since the adoption of the *Computer III Further Remand Notice*, significant changes occurred in the telecommunications industry that affect our analysis of the issues raised in this proceeding. Most importantly, Congress passed the Telecommunications Act of 1996 to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans "advanced telecommunications and information technologies and services by opening all telecommunications markets to competition." Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996). In light of the 1996 Act and ensuing changes in telecommunications technologies and markets, the Commission believed it necessary not only to respond to the issues remanded by the Ninth Circuit, but also to reexamine the nonstructural safeguards regime governing the provision of information services by the BOCs. We therefore issued in 1998 a Further Notice to address issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the *Computer III* regime. *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of *Computer III* and ONA Safeguards and Requirements, Further Notice of Proposed Rulemaking, CC Docket No. 98-10, 13 FCC Rcd 6040 (1998) (*Further Notice*).

[6] This order focuses exclusively on CEI plans (*Further Notice* at 6076-82, ¶¶ 60-73) and network information disclosure requirements *(Further Notice* at 6103-11, ¶¶ 117-123), and we do not reach other issues raised in the *Further Notice*. In particular, we do not address the issues in this docket on remand from the United States Court of Appeals for the Ninth Circuit. We will address those issues in a separate decision at a later date. *See infra*, n.11,

response to the direction of Congress that the Commission review its regulations every two years, and repeal or modify any that we determine to be "no longer necessary in the public interest."[7] In the *Further Notice,* we explained that the Commission sought to strike a reasonable balance between the goal of reducing and eliminating those regulatory requirements it could, and the recognition that, until full competition is realized, certain safeguards may still be necessary.[8]

4. For reasons we explain below, we conclude that although the BOCs must continue to comply with their CEI obligations, they should no longer be required to file or obtain pre-approval of CEI plans and plan amendments before initiating or altering an intraLATA information service. Instead, we will require the BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites, and to notify the Common Carrier Bureau upon such posting. We also conclude that the network information disclosure rules set forth in the *Computer II* and *Computer III* proceedings have been effectively superseded by the disclosure rules that the Commission adopted pursuant to the 1996 Act, and we therefore eliminate those rules. For reasons set forth below, however, we retain the *Computer II* network disclosure requirement that incumbent local exchange carriers (LECs) must disclose network changes that could affect the manner in which customer premises equipment (CPE) is attached to the interstate network.[9]

5. This modification of our CEI rules should reduce substantially the burden of compliance with these requirements by the BOCs. By eliminating the need to obtain pre-approval of the BOCs' CEI plans, we remove the delay that has sometimes hampered the BOCs in their introduction of new intraLATA information services. As we explain below, requiring the BOCs to post CEI plans on their publicly accessible Internet sites should not delay the introduction of innovative information services, because posting and service initiation may occur simultaneously. Also, by limiting the notification aspect of the requirement to a single-page letter stating the Internet address and path to the relevant CEI plan, the new procedure minimizes the administrative burden associated with the plans. Removing the CEI plan pre-approval process not only lifts a regulatory burden from the BOCs, but also allows them to bring new services to consumers sooner. At the same time, by requiring BOCs to post their CEI plans on the Internet, we ensure that the information which the BOCs' competitors still need will continue to be widely and conveniently available. Freely available information concerning interconnection helps make vigorous competition possible, which ultimately benefits consumers.

6. By removing the *Computer II* and *Computer III* network disclosure regimes, we reduce from three to one the sources to which an incumbent LEC must look to ascertain its

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for citations relating to the *Computer III* proceeding.

[7] 47 U.S.C. § 161(a)(2).

[8] *Further Notice*, 13 FCC Rcd at 6046, ¶ 7.

[9] *See* Appendix B, 47 C.F.R. § 51.325(a) and 47 C.F.R. § 64.702.

disclosure obligations. All of the Commission's network disclosure obligations now reside together in sections 51.325–335 of our rules, which clarifies and streamlines the network disclosure regulation that remains.[10] In addition, by eliminating the *Computer II* "all carrier" rule, we remove entirely the regulatory burden of network information disclosure obligations from both IXCs and competitive LECs. Instead, we rely on market forces to ensure network disclosure by those sectors of the telecommunications industry that we find to be subject to competitive pressures, and in which no carrier enjoys the degree of market power that could make anti-competitive nondisclosure appealing. The measures we adopt in this *Order* thus carry out the Commission's obligation to review our rules to determine whether they are no longer necessary in the public interest as a result of meaningful economic competition.

II. COMPARABLY EFFICIENT INTERCONNECTION PLAN REQUIREMENTS

A. BACKGROUND

7. The Commission has long sought to maintain appropriate safeguards for the provision by the BOCs of enhanced services.[11] Since its *Computer I* proceeding, the Commission has adopted a variety of regulatory tools to prevent improper cost allocation and access discrimination against ESPs in the provision of enhanced services, both by the BOCs,

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[10] *See infra.* n.13 for citations to the *Computer II* proceeding.

[11] Basic services, such as "plain old telephone service" (POTS), are regulated as tariffed services under Title II of the Communications Act. Enhanced services use the existing telephone network to deliver services that provide more than a basic transmission offering. Examples of enhanced services include, among other things, voice mail, electronic mail, electronic store-and-forward, facsimile store-and-forward, data processing, and gateways to online databases. *See, e.g. Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1724 n.3 (1995) (*Interim Waiver Order*); 47 C.F.R. § 64.702(a); Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer III*), Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order, vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *recon. dismissed in part*, Order, CC Docket Nos. 90-623, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995) (referred to collectively as the *Computer III* proceeding); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), *recon.*, 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), *erratum*, 5 FCC Rcd 4045 (1990), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993), *recon.*, 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*); 6 FCC Rcd 7646 (1991) (*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment Order*), *pet. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993).

and, before divestiture, by their predecessor in interest, AT&T.[12] In the *Computer II* proceeding, the Commission required the then-integrated Bell System to establish structurally separate affiliates for the provision of enhanced services in order to address the concern over AT&T's incentive and ability to engage in anticompetitive activity.[13] Following the divestiture of AT&T in 1984,[14] the Commission extended the structural separation requirements of *Computer II* to the BOCs.[15] In *Computer III*, after reexamining the telecommunications marketplace and the effects of structural separation during the six years since *Computer II*, the Commission determined that the costs of structural separation outweighed the benefits, and that nonstructural safeguards could protect competitive ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies associated with structural separation.[16]

8. Under *Computer III* and our Open Network Architecture rules, the BOCs are permitted to provide enhanced services on an integrated basis through the regulated entity, subject to certain nonstructural safeguards.[17] One of the safeguards the Commission instituted

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[12] *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities* (*Computer I*), 28 FCC 2d 291 (1970) (*Tentative Decision*); 28 FCC 2d 267 (1971) (*Final Decision*), *aff'd in part sub nom. GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973).

[13] *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Computer II*), 77 FCC 2d 384,475-486, ¶¶ 233-60. (1980) (*Computer II Final Decision*), *recon.*, 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[14] *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *affirmed sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[15] *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, CC Docket No 83-115, Report and Order, 95 FCC 2d 1117, 1120, ¶ 3 (1984) (*BOC Separation Order*), *affirmed sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), *affirmed on recon.*, FCC 84-252, 49 Fed. Reg. 26056 (1984) (*BOC Separation Reconsideration Order*), *affirmed sub nom. North American Telecommunications Ass'n v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

[16] *Computer III Phase I Order*, 104 FCC 2d at 964-965, ¶¶ 3-6. We discussed in detail the history of the *Computer III* proceeding in the *Computer III Further Remand Notice*, 10 FCC Rcd at 8362-8369, ¶¶ 3-10.

[17] The Commission initially applied the *Computer III* and ONA rules to both AT&T and the BOCs. *Computer III Phase I Order*, 104 FCC 2d 958 (1986). In subsequent orders, the Commission first modified, and then relieved, AT&T of most *Computer III* and ONA requirements. *See, e.g., Computer III Phase I Reconsideration Order*, 2 FCC Rcd 3035 (1987); *Competition in the Interstate Interexchange Marketplace,* Report and Order, 6 FCC Rcd 5880 (1991); *Competition in the Interstate Interexchange Marketplace,* Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562 (1995). ONA is the overall design of a carrier's basic network services to permit all users of the basic network, including the information services operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and equal-access basis. The BOCs

in the *Computer III* decision requires the BOCs to obtain Commission approval of, and to comply with, a service-specific Comparably Efficient Interconnection (CEI) plan in order to offer a new enhanced service.[18] In these CEI plans, which address nine separate parameters, the BOC must explain how it would offer to competitive ESPs, on a non-discriminatory basis, all the underlying basic services that the BOC uses to provide its own enhanced service offering.[19] The Commission indicated that such a CEI requirement, itself a form of interconnection making basic network facilities and services available to the public, could promote the efficiencies of competition in enhanced services markets by permitting the BOCs to participate in such markets, provided they opened their networks to competitors.[20]

9. As noted above, the Commission in 1998 released a *Further Notice* to reexamine the issues of structural and nonstructural safeguards in light of further developments. We observed in the *Further Notice* that the BOCs remain the dominant providers of local exchange and exchange access services in their in-region states,[21] and thus continue to have the ability to engage in anticompetitive behavior against competitive ISPs.[22] We noted that the movement toward local exchange and exchange access competition should, over time, decrease and eventually eliminate the need for regulation of the BOCs to ensure that they do not discriminate against competitive ISPs in providing access to their basic service offerings.[23] The Commission also acknowledged that Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies.[24] In addition, we noted that Congress required the Commission to conduct a biennial review of regulations that

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and GTE through ONA must unbundle key components, or elements, of their basic services and make them available under tariff, regardless of whether their information services operations utilize the unbundled components. Such unbundling ensures that competitors of the carrier's information services operations can develop information services that utilize the carrier's network on an economical and efficient basis.

[18] *See Computer III Phase I Order*, 104 FCC 2d at 1035-1042, ¶¶ 147-166. The Commission initially imposed these CEI requirements on AT&T as well. In subsequent orders, the Commission first modified, and then relieved, AT&T of these requirements. The Commission has never imposed CEI requirements on GTE or any other independent LEC.

[19] *Id.* The nine CEI parameters involve 1) interface functionality; 2) unbundling of basic services; 3) resale; 4) technical characteristics; 5) installation, maintenance, and repair; 6) end user access; 7) CEI availability as of the date the BOC offers its own enhanced service to the public; 8) minimization of transport costs; and 9) availability of the offering to all interested ISPs.

[20] *Id.* at 963, 1039, ¶¶ 2, 156.

[21] The BOCs currently account for approximately 97 percent of the local service revenues in those markets. FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition*, December 1998, tbl. 2.1.; *see also Non-Accounting Safeguards Order*, 11 FCC Rcd at 21912, ¶ 10.

[22] *Further Notice*, 13 FCC Rcd at 6072, ¶ 51.

[23] *Id.*

[24] *Id.* at 6045-46, ¶ 5.

apply to operations or activities of any provider of telecommunications service, and to repeal or modify any regulation we determine to be "no longer necessary in the public interest."[25]

10. In the *Further Notice*, the Commission tentatively concluded that we should eliminate the requirement that BOCs file CEI plans and obtain Commission approval for those plans prior to providing new intraLATA information services.[26] Given the protection afforded by the Commission's ONA requirements[27] and the 1996 Act, we tentatively concluded that the administrative costs associated with BOC preparation and agency review of CEI plans outweighed their utility as an additional safeguard against access discrimination, and that the preparation and review of CEI plans could delay the introduction of new information services by the BOCs, without commensurate regulatory benefits.[28] We tentatively concluded that such a result would be contrary to one of the Commission's original purposes in adopting a nonstructural safeguards regime, which was to promote and speed introduction of new information services.[29] Finding that the burden imposed by these requirements outweighed their benefit as additional safeguards against access discrimination, we tentatively concluded that we should eliminate the requirement that BOCs file CEI plans, and obtain Bureau approval for those plans, prior to providing new information services.[30] We also tentatively concluded that lifting the CEI plan filing requirement would further our statutory obligation to review and eliminate regulations that are "no longer necessary in the public interest."[31] We sought comment on these tentative conclusions and our supporting analysis.[32]

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[25] 47 U.S.C. § 161(a)(2); *Id.* at 6046, ¶ 6.

[26] *Further Notice*, 13 FCC Rcd at 6077, ¶ 61.

[27] *Id.* The BOCs currently make available to competing ISPs over 150 ONA network services. Under the Commission's ONA requirements, not only must the BOCs offer network services to competing ISPs in compliance with the nine CEI "equal access" parameters, but the BOCs must also unbundle and tariff key network service elements beyond those they use to provide their own enhanced services offerings. Such unbundling ensures that competitors of the carrier's information services operations can develop information services that utilize the carrier's network on an economical and efficient basis, and constitute an additional safeguard against access discrimination following the lifting of structural separation. *Computer III Phase I Order*, 104 FCC 2d at 1019-20, ¶ 113; *see also Computer III Further Remand Proceedings*, 10 FCC Rcd at 8373-74, ¶¶ 18-19.

[28] *Further Notice*, 13 FCC Rcd at 6078, ¶ 62.

[29] *Id.* at 6078, ¶ 63. *See generally Computer III Phase I Order*, 104 FCC 2d at 1007-1011, ¶¶ 88-97.

[30] *Id.* at 6079, ¶ 64.

[31] *Further Notice*, 13 FCC Rcd at 6079, ¶ 64; *See* 47 U.S.C. § 161.

[32] *Further Notice*, 13 FCC Rcd at 6078-79, ¶ 64. See Attachment A for a list of commenters in this proceeding.

B. DISCUSSION

1. Introduction

11. We believe that, in today's telecommunications market, compliance with the Commission's CEI requirements remains conducive to the operation of a fair and competitive market for information services. Moreover, we believe that full public disclosure of how a BOC intends to comply with these requirements facilitates the successful operation of the requirements themselves. Based on the record before us in this proceeding, and as we discuss below, we conclude that the BOCs' CEI plans have continuing importance in that they provide non-BOC ISPs with helpful information regarding their interconnection rights, options, and methods. These plans thus ensure that non-BOC ISPs have access to the underlying basic services that the BOCs use for their own information service offerings, access which enables those non-BOC ISPs to provide competitive offerings. We find that neither the protection afforded by ONA nor the effect of the 1996 Act has yet rendered the CEI plans superfluous as an effective means of making this information available and of promoting BOC compliance with their interconnection obligations.[33] For these reasons, we do not at this time eliminate the requirement that BOCs publicly disclose in a written document how they will comply with the Commission's CEI parameters.

12. We further conclude, however, that, although the BOCs must continue to prepare CEI plans, we should no longer require BOCs to file their CEI plans with the Commission, or obtain the Commission's approval of these plans, before initiating a new or changing an existing intraLATA information service. We conclude that the chief burdens associated with the CEI requirements – the administrative burden associated with filing the plans, and the delay in the introduction of new services – can be eliminated without compromising the efficient dissemination of the information contained in the BOC CEI plans. For these reasons, and as we discuss below, we eliminate the requirement that BOCs file with the Commission and obtain from the Commission approval of their CEI plans. In its place, we require the BOCs to post on their publicly accessible Internet page, linked to and searchable from the BOC's main Internet page, their CEI plan for any new or altered intraLATA information service offering, and to notify the Common Carrier Bureau at the time of the posting.[34] Through this public disclosure requirement, we protect the emerging development of competition in the information services marketplace, which has yielded consumer benefits.

2. Benefits of Public Disclosure of CEI Compliance

13. As stated above, the Commission continues to believe that public disclosure of how a BOC is complying with CEI facilitates the successful operation of the CEI requirements themselves. From the nine parameters of a BOC's CEI plan, an ISP can obtain detailed information regarding the following:

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[33] *See Computer III Phase I Order*, 104 FCC 2d at 1039-42, ¶¶ 154-166.

[34] Specific posting and notification requirements are listed *infra* at ¶ 20.

- *Interface Functionality.* The BOC must "make available standardized hardware and software interfaces that are able to support transmission, switching, and signalling functions identical to those utilized in the enhanced service provided by the carrier."[35] This provision ensures that a competitive ISP will know what interfaces it must use to interconnect with the BOC's network.

- *Unbundling of Basic Services.* The BOC must unbundle, and associate with a specific rate in the tariff, the basic services and basic service functions that underlie the carrier's enhanced service offering.[36] This provision ensures that a competitive ISP can purchase the underlying telecommunications services on which it bases its enhanced services. For example, an ISP might purchase tariffed transport services for its voicemail service.

- *Resale.* The BOC's "enhanced service operations [must] take the basic services used in its enhanced services offerings at their unbundled tariffed rates as a means of preventing improper cost-shifting to regulated operations and anticompetitive pricing in unregulated markets."[37] This provision ensures that both BOC and non-BOC ISPs pay the same amount for the underlying telecommunications services obtained from the BOC.

- *Technical Characteristics.* The BOC must provide basic services with technical characteristics that are equal to the technical characteristics the carrier uses for its own enhanced services.[38] This provision ensures that a competitive ISP can base its enhanced offering on telecommunications services that are of equal quality to those which the BOC's customers receive.

- *Installation, Maintenance, and Repair.* The BOC must provide the same time periods for installation, maintenance, and repair of the basic services and facilities included in a CEI offering as those the carrier provides to its own enhanced service operations.[39] This provision ensures that a competitive ISP can offer its customers support services of equal quality to those which the BOC's customers receive.

- *End User Access.* The BOC must provide to all end users the same abbreviated dialing and signalling capabilities that are needed to activate or obtain access to enhanced services that use the carrier's facilities, and provides to end users equal opportunities to obtain access to basic facilities through derived channels, whether they use

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[35] *Computer III Phase I Order*, 104 FCC 2d at 1039, ¶ 157.

[36] *Id.* at 1040, ¶ 158.

[37] *Id.* at 1040, ¶ 159.

[38] *Id.* at 1040, ¶ 160.

[39] *Id.* at 1041, ¶ 161.

the enhanced service offerings of the carrier or of a competitive provider.[40] This provision ensures that a competitive ISP's customers will have the same access as the BOC's customers to special network functions offered in conjunction with information services.

- *CEI Availability.* The BOC must make its CEI offering available and fully operational on the date that it offers its corresponding enhanced service to the public, and provide a reasonable period of time when prospective users of the CEI offering can use the CEI facilities and services for purposes of testing their enhanced service offerings.[41] This provision ensures that a non-BOC ISP is not put at a competitive disadvantage by a BOC initiating a service before the BOC makes interconnection with the BOC's network available to competitive ISPs, so that they are able to initiate a comparable service.

- *Minimization of Transport Costs.* The BOC must provide competitors with interconnection facilities that minimize transport costs.[42] This provision ensures that BOCs can not require competitive ISPs to purchase unnecessarily expensive methods of interconnection with the BOC's network.

- *Availability to All Interested ISPs.* The BOC is prohibited from restricting the availability of the CEI offering to any particular class of customer or enhanced service competitor.[43] This provision ensures that BOCs do not engage in anticompetitive teaming with one competitive ISP and against others.

14. We agree with non-BOC ISPs and other commenters that CEI plans provide useful information that is either not available, or not available in as much detail, from other sources.[44] Moreover, we conclude that the BOCs' CEI plans present this information in a more usable form than is otherwise available to ISPs. The nine parameters of a CEI plan unite in a single document the disparate pieces of information that a BOC makes available to its competitors through other avenues. Such a collection of information in a single CEI plan is significantly more useful to competitive ISPs than the theoretical opportunity to glean similar information piecemeal from a BOC's voluminous tariff, ONA, and network disclosure

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[40] *Id.* at 1041, ¶ 162.

[41] *Id.* at 1041, ¶ 163.

[42] *Id.* at 1042, ¶ 164.

[43] *Id.* at 1042, ¶ 165.

[44] AirTouch Comments at 4 (CEI plans allow providers to ascertain a LEC's duties); America OnLine Comments at 20 (CEI plans often constitute the only notice that unaffiliated ISPs now have of BOC provision of information services); GSA Comments at 7-8 (CEI plans provide more than detailed summary; plan has detailed information on functionality, costs, and schedules for service availability); ADT Security Services, Inc. (ADT) Reply at 2 (CEI plans are a vital source of information regarding BOC activities in the information service marketplace, including alarm services); GSA Reply at 4-5, 10 (The basic information on the nine CEI parameters would not be available to regulators, competing ESPs, or end users if CEI filings were eliminated).

filings.[45] In addition, CEI plans describe the availability of comparable interconnection to *services*, as distinct from the building-block *elements* of services described in ONA filings, and so provide competitive ISPs with a different and frequently more appropriate level of access to the public switched network.[46] We accord these latter two reasons significant weight in the case of smaller ISPs, newly formed ISPs, or ISPs that are not aligned with a competitive LEC, because such ISPs may find gathering the relevant information from varied and lengthy BOC filings particularly burdensome, and accessing the information in a single document considerably more manageable.[47] Without access to this information, competitive ISPs would find it more difficult to obtain the basic services they need to provide competing information services.

15. Several ISPs and their supporters also suggest that, in addition to providing non-BOC ISPs with an accessible source of information, the existence of CEI plans helps the Commission enforce compliance with BOC interconnection obligations.[48] We strongly agree. We believe that competitive ISPs will themselves monitor CEI compliance vigilantly, and will call the Commission's attention to any failure by a BOC to follow through on its CEI responsibilities. Thus, the BOCs' compliance with the Commission's CEI requirements can be easily monitored by the parties whom they most concern, and we can expect to be informed through the section 208 complaint process of any failure to provide either the necessary information or the promised access.[49] Having all CEI-related information in a single document that is easily accessible to the public will ensure the Commission's continuing ability to enforce the CEI requirements. The Commission will not hesitate to use its enforcement authority, including the Accelerated Docket or revised complaint procedures,

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[45] Thus, we disagree with U S WEST's contention that its CEI plans are superfluous because all nine CEI parameters are entirely satisfied by network disclosure, tariffing of ONA services, or by U S WEST's own "internal processes and practices." U S WEST Comments at 28-46; U S WEST Reply at 19.

[46] In their CEI plans, BOCs describe how the underlying basic telecommunications services the BOC uses to provide its own information services are to be made available to competing ISPs. In contrast, ONA is intended to give competing ISPs the ability to "pick and choose" network service elements which are not necessarily used by the BOC in providing its own information services. *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1724, 1725-26, ¶¶ 5, 11 (1995) (*Interim Waiver Order*). ONA is the overall design of a carrier's basic network services to permit all users of the basic network, including the information services operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and "equal access" basis. Unbundling under ONA emphasizes the unbundling of basic services, not the substitution of underlying facilities in a carrier's network. Unbundling under section 251, in contrast, includes the physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. *See Computer III Phase I Order*, 104 FCC 2d at 1019, ¶ 113; *Local Competition Order*, 11 FCC Rcd at 15631, ¶ 258; and *BOC ONA Order*, 4 FCC Rcd at 41, ¶ 69.

[47] CIS, an ISP serving 2,000 residential and business customers in Nebraska, comments that reports published on a web page are accessible to small ISPs. CIS Comments at 3. US WEST agrees with CIS that ONA information should be published on a web page. US WEST Reply Comments at 21.

[48] AirTouch Comments at 2-4; ITAA Comments at 17-20; ADT Reply at 2; CIX Reply at 7.

[49] 47 U.S.C. § 208. The § 208 complaint process is open to any entity or individual.

to review and adjudicate allegations that a BOC is falling short of fulfilling any of its CEI obligations.[50]

16. We disagree with SBC and BellSouth that CEI and other safeguards are surrogates for competition, and because there are many competitive ISPs, such surrogates are no longer needed.[51] Although many ISPs compete against one another, each ISP must obtain the underlying basic services from the incumbent local exchange carrier, often still a BOC, to reach its customers.[52] Although we observed in the *Further Notice* that, under the 1996 Act, the BOCs are subject to additional statutory requirements, such as the section 251 unbundling and the network information disclosure requirements, that in time should help prevent access discrimination, we cannot yet conclude that the pro-competitive goals of the 1996 Act have been fully reached.[53] Based on these circumstances, we do not believe that our progress in implementing the 1996 Act has reduced the threat of discrimination sufficiently to warrant removal of these additional safeguards at this time.

17. Finally, we disagree with SBC's contention that safeguards other than CEI requirements, such as ONA and section 251 unbundling requirements, are sufficient to protect against discriminatory interconnection, and that any CEI requirement to address the same concern would be the sort of redundant regulation "no longer necessary in the public interest" that the Commission must eliminate.[54] U S WEST also argues that the information available from a BOC's tariff, ONA, and network disclosure overlaps with the information available in a BOC's CEI plan, so requiring BOCs to formulate CEI plans is redundant and unnecessary."[55] We find that because CEI plans help inform competitive ISPs of their service interconnection options, and because informed ISPs will contribute to our enforcement of

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[50] CIX argues that CEI pre-approval is preferable to an after-the-fact complaint process, because a retrospective process rarely makes the injured parties or the competitive process whole (*i.e.*, returns the market to a state of full competition). CIX Reply at 6-7. CIX identifies a legitimate concern, and we agree to the extent that, to be effective, enforcement of BOC interconnection duties must be swift and sure. We note, however, that a pre-approval process that delays or prevents the offering of new services may also cause market distortion.

[51] BellSouth Comments at 24; SBC Reply at 17.

[52] Incumbent LEC share of U.S. local service revenues dropped to approximately 97 percent for the year 1997. *FCC, Common Carrier Bureau, Industry Analysis Division, Local Competition,* December 1998, tbl.2.1 (summarizing 1997 actual revenues). Financial community *estimates* of market shares toward the end of 1998 attribute 4 percent to 5 percent of local market revenues to competitive local exchange carriers (CLECs). Merrill Lynch & Co., United States Telecommunications/Services, *Telecom Services--Local: 3Q98 Preview*, 18 November 1998, tbl. 11 (estimating 4.5 percent CLEC actual revenue market share in the third calendar quarter and forecasting 5.1 percent in the fourth quarter). *Accord*, America OnLine Comments at 9-10 ("Internet and online service providers cannot currently rely solely on market forces to protect against anticompetitive conduct, because ISPs remain overwhelmingly dependent on incumbent carriers such as the BOCs for local access to their customers.")

[53] *See* 47 U.S.C. § 251(c); *See also Further Notice*, 13 FCC Rcd at 6078, ¶ 62.

[54] SBC Comments at 29-30.

[55] U S WEST Reply at 19.

nondiscriminatory access, continued imposition of the CEI plan requirement is not redundant. We further believe that, even if compliance with this requirement results in some overlap with other interconnection obligations, given the regulatory changes made in this order, the burden imposed on the BOCs of publicly disclosing CEI compliance is very slight in comparison to the substantial benefit of the additional safeguard.

18. Several BOCs observe that, as we acknowledged in the *Further Notice*, the Commission originally intended CEI plans to be an interim measure that would in due course be supplanted by the Commission's ONA scheme.[56] Two reasons cause us to reevaluate that position, and to determine that, independent of ONA, publicized CEI plans remain valuable safeguards to competition at this point in time.[57] First, the growth of the information service industry leads us to believe that many more, and more diverse, ISPs now exist than the Commission conceived at the inception of the ONA and CEI requirements in 1986.[58] The great majority of these ISPs depend on access to the BOCs' public switched telephone network to reach their customers. Many of these ISPs, especially newer or smaller entities, or those not affiliated with a competitive LEC, may understandably find a BOC's CEI plan, which facilitates efficient interconnection to basic services, more useful than a voluminous ONA filing, which primarily concerns interconnection to network elements.

19. Second, the requirement that BOCs simply post their CEI plans on the Internet – an unimaginable option in 1986 – is much less burdensome than the pre-approval process it replaces. By eliminating the CEI plan filing and pre-approval requirements, which we discuss below, we remove that aspect of the overall CEI requirement which the BOCs have found most burdensome. Moreover, Internet posting not only relieves BOCs of the burden of delaying the introduction of services until they receive approval of their CEI plans, but also makes the plans accessible to ISPs at the click of a mouse. We find that the substantial benefit of informing non-BOC ISPs of their interconnection rights and methods of interconnection in a practical and accessible form, and thereby assisting our enforcement of those rights, significantly outweighs the much-reduced cost to the BOC of formulating and posting the plans. For these reasons, and under current market conditions, we believe that publicized CEI plans provide a valuable safeguard independent of ONA.

20. Posting CEI plans on their publicly accessible Internet sites, linked to and searchable from the BOC's main web page, should not hamper the BOCs in their introduction

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[56] SBC at Comments at 29, 32; Bell Atlantic Comments at 12; and BellSouth Comments at 24. *See Further Notice*, 13 FCC Rcd at 6077, ¶ 61. *See Computer III Phase I Order*, 104 FCC 2d at 964-65, ¶¶ 4-5.

[57] At no time has there been any suggestion that the BOCs' duty to provide comparably efficient interconnection has been regarded as "interim."

[58] For example, the number of Internet service providers grew from an estimated 2,000 in 1996, to an estimated 6,500 by the end of 1998. A CIX survey in early 1997 confirmed that Internet service providers are primarily privately-held, small and very small businesses with revenues of less than $1 million and few employees. The majority of competitive Internet access provision to non-urban areas is through these entrepreneurial companies. Letter from Barbara A. Dooley, Executive Director, CIX, to J. Reel, Staff Attorney, Common Carrier Bureau, FCC, Jan. 8, 1999.

of innovative information services, because posting and service initiation may occur simultaneously.[59] Any CEI requirement that BOCs have been obliged to fulfill prior to initiating service, such as providing non-BOC ISPs with testing opportunities, no longer must be met before initiating service, but rather may now be met simultaneously with initiating service. The substance of notification to the Bureau may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau.[60] We conclude that this minimally intrusive posting and notification procedure, which shall fulfill the CEI publication requirement, will preserve the useful elements of the CEI plans, while greatly reducing the burden of compliance by the BOCs.[61]

3. Elimination of Filing and Pre-approval of CEI Plans

21. Based on the record before us, we conclude that the CEI plan filing and pre-approval process has significant disadvantages without commensurate advancement of our regulatory goal of ensuring fair and equal interconnection. Several BOCs confirm our tentative conclusion that filing and obtaining approval of CEI plans has caused significant delay in the introduction of new information services.[62] Bell Atlantic argues that even when no party has opposed a CEI plan, the pre-approval process has sometimes caused a substantial interval to pass between receipt and approval of a CEI plan.[63] Bell Atlantic further argues that delays have not been limited to plans for new services, but have also occurred with amendments to an existing service.[64] In addition, Ameritech offers evidence that the CEI pre-approval process may have deterred the BOCs from introducing some new services altogether.[65] Even without further reason to eliminate the CEI filing and approval process, we

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[59] These rules will take effect 30 days after publication of this *Report and Order* in the Federal Register. *See* 5 U.S.C § 553(d). Although a BOC's posted CEI plans will not become effective until that date, and hence new or amended services may not commence before that date, a BOC need not wait 30 days before posting CEI plans on its Internet cite, or before notifying the Secretary and the Common Carrier Bureau of the posting.

[60] If the BOC receives a good faith request for a CEI plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection.

[61] The elimination of our requirement that BOCs file and obtain approval of CEI plans prior to initiating or altering an information service has no effect on any other state or federal requirement that BOCs may have to meet prior to initiating or altering service.

[62] Ameritech Comments at 8-9; Bell Atlantic Comments at 12; BellSouth Comments at 26; and US WEST Reply at 18. *See Further Notice*, 13 FCC Rcd at 6078, ¶ 63.

[63] Bell Atlantic Comments at 12.

[64] *Id.*

[65] Ameritech Comments at Attachment A, referencing James Prieger, *The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services,* Department of Economics, University of California, Berkeley, and Law and Economics Consulting Group, Inc. (1998) (*Prieger Study*). This investigation analyzes the introduction of enhanced services by the BOCs from 1984 to 1997. CEI plans were required during

conclude that the lag in bringing desirable services to the public makes it necessary to streamline the CEI process.[66]

22. We do not find convincing the assertions of non-BOC commenters that the BOCs exaggerate their CEI-related burden, or that the burden is in any case worth imposing, because it contributes to a level playing field.[67] First, as we have explained, we find that CEI-related delay is a substantial burden on the BOCs. We do not agree with CIX that BOCs may reasonably be expected to take CEI-related delay into account when formulating their business plans, and that the BOCs may avoid the difficulty by proposing plans before they are ready to initiate service.[68] We find instead that the CEI approval process is too long, too unpredictable, and too subject to manipulation by other interested parties to be dismissed as a reasonable cost of doing business. Non-BOC commenters also argue that the regulatory cost of CEI must be measured against the benefit of creating and maintaining a level playing field.[69] We, too, believe it is appropriate to weigh the costs of regulatory measures against their benefits. Based on the above analysis, though, we find that the costs of delay associated

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that period except for an interim period between 1993 and 1995. *Prieger Study* at 2-3. (More precisely, the interim began in 1992 or 1993, depending on the BOC, and ended in 1995, when the Commission reinstated the requirement that BOCs file and obtain pre-approval of CEI plans in response to *California III*.) The *Prieger Study* claims to have found a statistically significant increase in the number of services introduced during the period between 1993 and 1995 when filing and obtaining approval of CEI plans was not required prior to the offering of new enhanced services. According to the *Prieger Study*, if the BOCs had added new services at the same rate during the period without the CEI plan filing requirement as they did during the period when that requirement was in effect, they would have added 17 new services. Instead, the BOCs added 27 new services, or about 60% more than expected. The *Prieger Study* concludes that the CEI requirement significantly hampered the introduction of new services. *Prieger Study* at 7-9. Other commenters, however, discuss possible flaws in the *Prieger Study* analysis. GSA and CIX argue (1) that the *Prieger Study* draws too broad a conclusion while ignoring too many complex variables, and (2) that because the *Prieger Study* ignores that CEI encourages non-BOC innovation, it fails to consider the positive effects of the CEI requirement on the market as a whole. CIX Reply at 9; GSA Reply at 8-10.

[66] In addition, the delay in service introduction associated with the current approval process could distort competition in the information services market. Ameritech alleges that its Personal Access Service (PAS) was opposed by MCI only, which added the functionality described in the CEI plan to its competing "MCI One" service over a period of 18 months, while contesting Ameritech's plan before the Common Carrier Bureau. Eventually Ameritech withdrew the plan. Ameritech Comments at 9-10; *see also* BellSouth at Comments at 24; SBC Comments at 27-28; SBC Reply at 16; US West Reply at 18. Without determining whether or not the CEI process has been abused in this manner, we agree that delay in approving CEI plans could create a potential avenue for competitors to exploit the process to their advantage.

[67] *See* ADT Reply at 3; ATSI Reply at 12-13; CIX Reply at 9; GSA Reply at 9.

[68] CIX Reply at 9.

[69] *See* ADT Reply at 3-4; ATSI Reply at 12-13; and GSA Reply at 9-10.

with the current CEI plan filing- and pre-approval requirement do not provide a commensurate benefit of enhanced fairness and equality among providers.[70]

23. We note that some commenters question the effectiveness of CEI plans, particularly as a replacement for structural separation or for further unbundling.[71] We agree that, standing alone, CEI plans would not entirely allay our concerns regarding the incentive and ability of the BOCs to derive unfair benefit from their control at this time over access to the majority of local exchange end users. We do not agree, however, that merely because a safeguard may not be entirely effective in all cases, it should not be used at all. Weighing instead the benefit that we believe some ISPs will derive from public disclosure of CEI plans, and the aid to enforcement of easily available CEI plans, against the much reduced burden that simply posting their plans imposes on the BOCs, we find the benefits of public disclosure of CEI plans clearly justify the costs.

4. CEI Plans for Telemessaging, Alarm Monitoring, and Payphone Services

a. Section 260 Telemessaging and Section 275 Alarm Monitoring Services

24. In the *Telemessaging and Electronic Publishing Order* and the *Alarm Monitoring Order*, respectively, the Commission concluded that the *Computer II*, *Computer III*, and ONA requirements continue to govern the BOCs' provision of intraLATA telemessaging services[72] and alarm monitoring services.[73] In the *Further Notice*, we noted

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[70] *See, e.g., Further Notice*, 13 FCC Rcd at 6067-70, ¶¶ 43-47. ADT argues that the remedy to CEI-related delay should be to expedite the process, and suggests an accelerated public notice system, whereby an uncontested plan could take effect after 60 days. ADT Reply at 4. Under ADT's approach, however, ISPs could still prolong the CEI pre-approval process by filing objections whenever they saw an advantage in doing so. In addition, ADT offers no reason why delay itself, even a delay of only two months, advances our policy goals. We therefore decline to adopt ADT's proposal that we institute a public notice system for pre-approving CEI plans.

[71] MCI Comments at 47-48 (CEI worthless as substitute safeguard for structural separation); Ad Hoc Comments at 6 (CEI worthless as substitute safeguard for further unbundling).

[72] *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5361, 5455, ¶ 221 (1997) (*Telemessaging and Electronic Publishing Order*).

[73] *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, Second Report and Order, 12 FCC Rcd 3824, 3848-49, ¶ 55 (1997), *recons. pending* (*Alarm Monitoring Order*); *see also Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, CCBPol 96-17, Memorandum Opinion and Order, 12 FCC Rcd 3855 (1997), *vacated and remanded sub nom. Alarm Industry Communications Committee v. Federal Communications Commission and United States of America*, No. 97-1218, 1997 WL 791658 (D.C. Cir. Dec. 30, 1997). We also found that section 275 applies to the provision by the BOCs of both intraLATA and interLATA alarm monitoring services. *Id.* at 3831-32, ¶ 16. Section 275(a)(1), however, generally prevents the BOCs from engaging in the provision of alarm monitoring service until February 8, 2001.

that because neither section 260 nor section 275 of the Act imposes separation requirements for the provision of intraLATA telemessaging services or alarm monitoring services, respectively, BOCs may provide those services, subject both to other restrictions in those sections, as well as the Commission's current nonstructural safeguards regime, as modified by any proposals that we might adopt in this proceeding.[74]

25. For the same reasons we lift the CEI filing and pre-approval requirement for other intraLATA information services provided by the BOCs on an integrated basis, we also lift the requirement for section 260 telemessaging and section 275 alarm monitoring services. We also require the BOCs to post on their Internet sites CEI plans for new or modified telemessaging or alarm monitoring services, and to notify the Bureau of the posting. As with other BOC intraLATA information services, we believe this approach minimizes a BOC's administrative burden, and eliminates regulatory delay; provides competitive ISPs with essential information; promotes the Commission's ability to monitor and enforce BOC access and interconnection obligations; and appropriately acknowledges the degree that competitive providers of telemessaging and alarm monitoring services must still depend on the basic services of the incumbent LEC – usually a BOC – for access to their customers.

b. Section 276 Payphone Services

26. In the *Further Notice*, we noted that section 276 directs the Commission to prescribe a set of nonstructural safeguards for BOC provision of payphone services that must include, at a minimum, "nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding."[75] In implementing section 276, the Commission required the BOCs, among other things, to file CEI plans describing how they would comply with various nonstructural safeguards.[76] The Bureau approved the BOCs' CEI

See 47 U.S.C. § 275. Because Ameritech is the only BOC that was authorized to provide alarm monitoring services as of November 30, 1995, the Commission found that Ameritech is the only BOC that qualifies for "grandfathered" treatment under section 275(a)(2). *See id.* § 275(a)(2); *Alarm Monitoring Order*, 12 FCC Rcd at 3839, ¶ 33. Ameritech provides intraLATA alarm monitoring pursuant to an approved CEI plan, *see Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 13758, 13769-70, ¶¶ 72-75 (Com. Car. Bur. 1995) (approving Ameritech's CEI plan for "SecurityLink" service), and interLATA alarm monitoring service pursuant to a waiver of the Modification of Final Judgment. *See United States v. Western Electric Co.*, 46 F.3d 1198 (D.D.C. 1995).

[74] *Further Notice*, 13 FCC Rcd at 6082-83, ¶ 74.

[75] *Id.* at 6083-84, ¶¶ 76-77; 47 U.S.C. § 276(b)(1)(C).

[76] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 at 20640-41, ¶¶ 199-200 (*Payphone Order*) (subsequent citations omitted).

plans to provide payphone service on April 15, 1997.[77] In the *Further Notice*, we sought comment regarding whether to relieve the BOCs from the requirement of filing amendments to their CEI plans for payphone services, and how such a step would comport with the statutory requirement in section 276.[78]

27. We now conclude that the BOCs should not be required to file or obtain approval of CEI plans for new payphone services or for amendments to their existing payphone plans. As with other applications of CEI, we find that the benefits of CEI plans may be largely preserved by instead requiring the BOCs to post on their Internet pages CEI plans for new or amended payphone services. Consistent with our application of CEI to intraLATA information services that BOCs provide on an integrated basis, we believe that, under current market conditions, such posting disseminates valuable interconnection information, and facilitates our enforcement of BOC interconnection responsibilities, at minimum cost to the BOCs.

28. While we decline in this *Order* to require the BOCs to file and obtain approval of CEI plans for amendments to their payphone services, we disagree with SBC's contention that CEI was excluded from the safeguards Congress referred to in section 276(b)(1)(C).[79] We believe that SBC is mistaken when it states that the CEI requirement was not adopted in the CC Docket No. 90-623 phase of the *Computer III* proceeding, and therefore could not have been among the nonstructural safeguards Congress meant when it referred to that proceeding. In CC Docket No. 90-623, CEI was discussed in tandem with ONA, and both

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[77] *See Ameritech's Plan to Provide Comparably Efficient Interconnection to Providers of Pay Telephone Services; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-790 (rel. April 15, 1997) (CCB); *Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of the Basic Payphone Services; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-791 (rel. April 15, 1997) (CCB); *BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-792 (rel. April 15, 1997) (CCB); *The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-793 (rel. April 15, 1997) (CCB); *Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-794 (rel. April 15, 1997) (CCB); *Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-795 (rel. April 15, 1997) (CCB); *U S WEST's Comparably Efficient Interconnection Plan for Payphone Services; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order, DA 97-796 (rel. April 15, 1997) (CCB) (collectively, *BOC CEI Payphone Orders*). *apps for review pending.*

[78] *Further Notice*, 13 FCC Rcd at 6084, ¶ 77.

[79] SBC Comments at 31-32.

safeguards were proposed and re-adopted together.[80] Nor do we endorse Ameritech's contention that the Commission fully satisfied the requirements of section 276(b)(1)(C) when, among other safeguards, the Commission directed the BOCs to produce the original CEI plans for payphone services.[81] We do agree, however, with Ameritech's observation that the Act contains no language requiring that the CEI regime should remain immutable forever.[82] In directing the Commission to prescribe a set of safeguards that should *equal* those adopted in *Computer III*, Congress declined to restrict the Commission to a fixed application of the *Computer III* safeguards.[83] Indeed, *Computer III* itself looked to a developing set of safeguards, so we conclude that, in referring to the *Computer III* proceeding, Congress expected the Commission's application of CEI and ONA to evolve over time.[84] Requiring the BOCs to post on the Internet CEI plans for new or amended payphone services is such an evolution in that it streamlines the BOCs' payphone-services CEI requirement in accordance with our mandate under biennial review, but also underscores the underlying requirement that BOCs comply with the CEI parameters.

5. IntraLATA Information Services Provided Through 272 and 274 Affiliates

a. Background

29. In the *Further Notice*, we observed that, under our current rules, a BOC may provide an intraLATA information service either on an integrated basis pursuant to an approved CEI plan, or on a structurally separate basis pursuant to the Commission's *Computer II* rules.[85] We noted that, in addition to the factors cited by the Commission in the *Computer III Phase I Order*, the advent of the 1996 Act may affect our analysis of the relative costs and

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[80] *See Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards*, Notice of Proposed Rulemaking and Order, 6 FCC Rcd 174, 179-80 ¶¶ 33-37 (1990) (*Computer III Remand Notice*); *Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7597-98 at ¶¶ 57-59 (1991) (*Computer III Remand Order*). *Accord Payphone Order*, 11 FCC Rcd at 20642, ¶ 202.

[81] Ameritech Comments at 11. Congress directs the Commission in section 276 to use *Computer III* safeguards to implement that section's requirement that a BOC "shall not subsidize its payphone service" and "shall not prefer or discriminate in favor of its payphone service." Congress thus assigns the Commission an ongoing responsibility with respect to these services.

[82] Ameritech Comments at 11.

[83] 47 U.S.C. § 276(b)(1)(C), emphasis added.

[84] *Computer III Remand Notice*, 6 FCC Rcd 179 at ¶ 33; *Computer III Remand Order*, 6 FCC Rcd 7598 at ¶ 59.

[85] *Further Notice*, 13 FCC Rcd at 6079, ¶ 66.

benefits of structural and nonstructural safeguards.[86] In this context, we noted that the Act's local competition provisions should in time provide for alternate sources of access to basic services, thereby diminishing the BOCs' ability to engage in anticompetitive behavior against competitive ISPs.[87]

30. Section 272 Separate Affiliates. In the *Non-Accounting Safeguards Order*, the Commission noted that section 272 of the Act imposes specific separate affiliate and nondiscrimination requirements on BOC provision of interLATA information services, but that section 272 does not address BOC provision of intraLATA information services.[88] We concluded that, pending the conclusion of the *Computer III Further Remand* proceeding, BOCs may continue to provide intraLATA information services on an integrated basis, in compliance with the Commission's nonstructural safeguards – including CEI – established in the *Computer III* and ONA proceedings.[89] In the *Further Notice*, however, we tentatively concluded that the BOCs should not have to file CEI plans for any information services they offer through section 272 separate affiliates, notwithstanding that section 272's requirements are not identical to the Commission's *Computer II* requirements.[90] We predicted that, after a BOC receives authority to provide interLATA services through a section 272 affiliate, the BOC might want to provide a seamless information service to customers that would combine both the inter- and intraLATA components, and we expressed concern that requiring the BOC to receive approval under a CEI plan for the intraLATA component of such services could needlessly delay the provision of integrated services to consumers.[91] We also reasoned that our concern regarding access discrimination would be sufficiently addressed by requirements set forth in section 272 and the Commission's orders implementing that section.[92]

31. Section 274 Electronic Publishing. In the *Telemessaging and Electronic Publishing Order*, the Commission concluded that our *Computer II, Computer III*, and ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing

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[86] *Id.* at 6076, ¶ 58.

[87] *Id.*

[88] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21969-70, ¶ 132.

[89] *Id.* at 21969-71, ¶¶ 132-134.

[90] *Further Notice*, 13 FCC Rcd at 6080, ¶ 68. We noted, however, that other applicable *Computer III* and ONA safeguards, as amended or modified by this proceeding, would continue to apply. *Id.*

[91] *Id.* at 6080, ¶ 69.

[92] *Id. See, e.g., Non-Accounting Safeguards Order*, 11 FCC Rcd at 21976-96, ¶¶ 146-91 (structural separation requirements), 21997-22017, ¶¶ 194-236 (nondiscrimination safeguards), 22036-47, ¶¶ 272-92 (joint marketing restrictions); *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 at 17617-18, ¶¶ 167-70 (accounting requirements) (1996) (*Accounting Safeguards Order*).

services.[93] The Commission further found that the record was insufficient to determine whether BOC provision of electronic publishing through a section 274 separate affiliate satisfied all the relevant requirements of *Computer II*, so that the BOC should not have to file a CEI plan for those services.[94] The Commission noted that the issue, as well as other issues raised regarding the revision or elimination of the *Computer III* and ONA requirements, would be considered in the *Computer III Further Remand* proceeding.[95]

32. In the *Further Notice*, we tentatively concluded that, just as BOCs should not be required to file CEI plans for intraLATA information services they provide through a section 272 affiliate, so too the requirement should be lifted for electronic publishing services or other information services that BOCs provide through a section 274 affiliate.[96] Two reasons led us to that tentative conclusion. First, we suggested that the section 274 separation and nondiscrimination requirements, and the Commission's rules implementing those requirements, sufficiently addressed our concerns regarding access discrimination.[97] Second, given that Congress set forth detailed rules in section 274 for the specific provision of electronic publishing services, we questioned whether it would be reasonable to continue to require the BOCs to file, and the Commission to approve, CEI plans before initiating or altering such services.[98]

b. Discussion

33. In this *Order*, we adopt our tentative conclusion that BOCs should not be required either to file or to obtain pre-approval of CEI plans for information services that are offered through section 272 or section 274 separate affiliates. The reasons that persuade us to eliminate the CEI filing and approval process in the context of intraLATA information services that a BOC offers on an integrated basis – reduction of administrative burden and elimination of delay – apply with at least equal force to the intraLATA services that a BOC chooses to offer through a section 272 or section 274 separate affiliate. Indeed, we agree with commenters that the requirements Congress set forth in sections 272 and 274 substantially reduce our concern regarding access discrimination, so there is even less reason

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[93] *Telemessaging and Electronic Publishing Order*, 12 FCC Rcd at 5446, ¶ 200. We also found that section 274, which establishes specific structural separation and nondiscrimination requirements for BOC provision of electronic publishing, applies to the provision of both intraLATA and interLATA electronic publishing. *Id.* at 5383, ¶ 50. BOCs that wish to provide interLATA electronic publishing, however, must first obtain section 271 authorization to do so. *See* 47 U.S.C. § 271; *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21908-09, ¶ 3.

[94] *Id.*

[95] *Telemessaging and Electronic Publishing Order*, 12 FCC Rcd at 5446, ¶ 200.

[96] *Further Notice*, 13 FCC Rcd at 6082, ¶ 72. We noted, however, that all other applicable *Computer III* and ONA safeguards, as amended or modified by this proceeding, would continue to apply. *Id.*

[97] *Id.* at 6082, ¶ 73.

[98] *Id.*

to delay the introduction of an intraLATA information service pending our review of a CEI plan.[99] That the pre-approval process might also delay the introduction of combined intra- and interLATA integrated information services is a further reason to eliminate the requirement. Such delay would frustrate our goal of enabling consumers to take advantage of innovative information services.[100]

34. Moreover, Congress has instructed us to repeal or modify any regulation we determine to be "no longer necessary in the public interest."[101] That Congress itself has addressed in sections 272 and 274 concerns over discriminatory interconnection and misallocation of funds makes pre-Act regulation by the Commission targeted to the same concerns the object of our special scrutiny. Because we believe that structural separation protects against discriminatory interconnection better than do nonstructural safeguards such as CEI, we see no reason at this time to impose on the BOCs even the relatively light burden of posting CEI plans on the Internet for intraLATA information services they provide through a separate subsidiary. Accordingly, we will no longer require the BOCs to formulate CEI plans before initiating or altering any intraLATA information service offered through a 272 or 274 affiliate. We rely, however, on the continuing vigilance of the ISP industry to inform us if BOCs appear to be using their control over network elements to the disadvantage of non-BOC entities. If credible evidence of favoritism toward an affiliate emerges, we could consider at that time whether there would be a benefit to requiring BOCs to disclose publicly on the Internet CEI plans for services provided by such affiliates.

6. Pending CEI Matters

a. Background

35. In the *Further Notice*, we sought comment on whether, if we adopted our tentative conclusion to eliminate the CEI plan filing requirement for the BOCs, we should also dismiss as moot all pending CEI matters, including approval of pending CEI plans, pending CEI plan amendments, and requests for CEI plan waivers, on the condition that the BOCs must comply with any new or modified rules that we might establish.[102] We received general support for this approach from several BOCs.[103] WorldCom, however, objects

[99] SBC Comments at 32-33; BellSouth Comments at 25-26; *See* 47 U.S.C. § 272(c)–(e) and 47 U.S.C. § 274(b).

[100] *See* ¶ 5, *supra.*

[101] 47 U.S.C. § 161(a)(2); *Further Notice*, 13 FCC Rcd at 6046, ¶ 6.

[102] Pending CEI-related matters to be dismissed as moot are listed in Appendices C and D.

[103] Bell Atlantic Comments at 13; BellSouth Comments at 22, n.48, SBC Comments at 30, n.72; US WEST Comments at 26.

strenuously to the dismissal of a pending challenge by one of its subsidiaries to two particular CEI plans involving Internet access.[104]

b. Discussion

36. We now believe that the Commission's section 208 enforcement process is far better suited than the CEI plan pre-approval process to addressing the complex and highly fact-specific issues that arise in certain CEI plans. In certain instances these issues fall outside the scope of the nine CEI parameters.[105] The section 208 formal complaint process is set up to conduct the fact-finding, arbitration, and adjudication necessary to resolve CEI-related disputes. Moreover, through use of the Commission's Accelerated Docket[106] or revised complaint procedures, parties would have swifter resolution and closure of their CEI-related disputes. For these reasons, we are confident that all parties, BOCs and non-BOCs, will be better served by the information- and enforcement-based system we adopt today,[107] and we encourage parties to file complaints with the Commission when they have reason to

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[104] WorldCom Comments at 8-10; WorldCom Reply at 5. On June 6, 1996, the Bureau released an order approving a CEI plan filed by Bell Atlantic for the provision of Internet Access Service. *Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd 6919 (Com. Car. Bur. 1996) (*Bell Atlantic Internet Access CEI Plan Order*). MFS, now a subsidiary of WorldCom, had filed comments opposing Bell Atlantic's plan, arguing, *inter alia*, that Bell Atlantic's Internet access service offering is an interLATA service that Bell Atlantic may only provide through a section 272 affiliate after obtaining section 271 authorization from the Commission. *See Bell Atlantic Internet Access CEI Plan Order* at 48 (*citing* MFS Comments at 8) (filed April 12, 1996). Following release of the *Bell Atlantic CEI Plan Order*, MFS filed a petition for reconsideration of that *Order*. Petition for Reconsideration of MFS Communications Company, Inc., (filed July 3, 1996). At about the same time, Southwestern Bell Telephone Company (SWBT) filed a CEI plan for Internet Support Services. *See* Pleading Cycle Established for Comments on SWBT's Comparably Efficient Interconnection Plan for Internet Support Services, CC Docket Nos. 85-229, 90-623 and 95-20, Public Notice, DA 96-1031 (rel. June 26, 1996). On July 25, 1996, MFS filed with the Commission a petition seeking to consolidate proceedings related to the *Bell Atlantic CEI Plan Order* reconsideration and the SWBT Internet support CEI plan with the *Non-Accounting Safeguards Proceeding*, on the grounds that the three proceedings raise similar novel, policy, factual, and legal arguments. Petition to Consolidate Proceedings by MFS Communications Company, Inc. (filed July 25, 1996). The Commission believed that the *Non-Accounting Safeguards Order* was not the appropriate forum for considering whether the various specific Internet services provided by the BOCs are "interLATA information services" because such determinations must be made on a case-by-case basis, and decided instead that the lawfulness of the specific Internet services provided by Bell Atlantic and SWBT would be more appropriately analyzed in the context of the separate CEI plan proceedings, consistent with the rules and policies enunciated in the *Non-Accounting Safeguards Order*. *Non-Accounting Safeguards Order* at 21966-68, ¶¶ 125-127.

[105] *See*, Bell Atlantic Amendment to CEI Plan for Internet Access Service, CCBPol 96-09, 11 FCC Rcd 6919 (1996), recon. pending, amendment filed 5/5/97; Southwestern Bell Telephone Company CEI Plan for Internet Support Services.

[106] Subject to the requirements for admission into that process. *See Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report & Order, FCC 98-154 (rel. July 14, 1998).

[107] *See* 47 U.S.C. § 208(b)(1).

believe that a BOC is not strictly adhering to its posted CEI plan. Accordingly, we dismiss all pending requests for approval of CEI plans and CEI plan amendments.

37. We also dismiss without prejudice any pending petitions for reconsideration or applications for review of orders approving CEI plans. In discontinuing the CEI pre-approval process, it is not our intention to delay resolution of issues that have arisen outside the CEI parameters, such as the issues related to Internet service that are associated with the Bell Atlantic and SWBT CEI plans. We believe, rather, that these complicated, fact-specific issues may be more appropriately and more quickly resolved in the enforcement setting than in the context of a CEI plan. Accordingly, parties affected by such ancillary issues may file section 208 formal complaints with the Commission.[108] Should they file such a complaint, those parties with previously pending challenges to CEI plans may, as appropriate, rely on their already existing record, rather than developing a factual record through the procedures normally applicable to formal complaints.[109]

III. NETWORK INFORMATION DISCLOSURE REQUIREMENTS

A. BACKGROUND

38. In the *Further Notice*, we addressed the Commission's network information disclosure rules. These rules seek to prevent anticompetitive behavior by ensuring that ISPs and others have timely access to information affecting interconnection to the BOCs', AT&T's, and other carriers' networks.[110] Prior to the 1996 Act, the rules established in the Commission's *Computer II* and *Computer III* proceedings governed the disclosure of network information.[111] Section 251(c)(5) of the Act requires incumbent LECs to "provide reasonable

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[108] We note that, although the rules and requirements we promulgate in this *Report and Order* will not take effect until 30 days after publication in the Federal Register, parties need not wait 30 days after such publication to file a section 208 complaint.

[109] In the limited instance of previously filed petitions seeking the reconsideration of CEI plans, we may depart from our normal formal complaint requirements. *See* 47 U.S.C. § 4(j); 47 C.F.R. § 1.3.

[110] *Further Notice*, 13 FCC Rcd 6103-11, at ¶¶ 117-123.

[111] The *Computer II* network information disclosure rules are set forth in section 64.702(d)(2) of the Commission's rules and in certain the *Computer II* decisions. *See* 47 C.F.R. § 64.702(d)(2); *see, e.g.*, *Computer II Final Decision*, 77 FCC 2d 384 at 480, ¶ 246; *Computer II Reconsideration Order*, 84 FCC 2d 50 at 82-83, ¶ 95; and *Computer and Business Equipment Manufacturers Association Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, ENF-82-5, Report and Order, FCC 83-182, 93 FCC 2d 1226 (1983) (*Computer II Disclosure Order*). The *Computer III* network information disclosure rules are set forth in the *Computer III Phase I Order* and *Computer III Phase II Order* and other *Computer III* orders. *See, e.g.*, *Computer III Phase I Order*, 104 FCC 2d 958 at 1080-1086, ¶¶ 246-255; *Computer III Phase II Order*, 2 FCC Rcd 3072 at 3086-3093, ¶¶ 102-140. GTE was made subject to the *Computer III* network information disclosure rules in the ONA proceeding. *See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256, Report and Order, FCC 94-58, 9 FCC Rcd 4922, 4947-4948, ¶¶ 50-53 (1994) (*GTE ONA Order*).

public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."[112] In the *Local Competition Second Report and Order*, the Commission adopted network information disclosure requirements to implement section 251(c)(5).[113] Although we discussed our existing network information disclosure requirements in conjunction with the requirements of section 251(c)(5) in the *Local Competition Second Report and Order*, we did not address in that proceeding whether our *Computer II* and *Computer III* network information disclosure requirements should continue to apply independent of our section 251(c)(5) network information disclosure requirements.[114] In the *Further Notice,* we sought comment on the extent to which the Commission should retain the network information disclosure rules established in the *Computer II* and *Computer III* proceedings in light of the disclosure requirements stemming from section 251(c)(5) of the 1996 Act.[115] We first provide a brief review of the three disclosure regimes.

1. *Computer II* Network Disclosure Rules

39. The *Computer II* network information disclosure rules consist of two requirements: one, termed "the separate subsidiary rule," that depends on the existence of a *Computer II* separate subsidiary;[116] and another, termed "the all carrier rule," that applies to all carriers owning basic transmission facilities, independent of whether the carrier has a separate subsidiary.[117] The separate subsidiary network disclosure requirement obligates the BOCs to disclose "at a minimum, . . . any network information which is necessary to enable

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[112] 47 U.S.C. § 251(c)(5). An incumbent LEC is defined in section 251(h).

[113] *See* 47 C.F.R. §§ 51.325-51.335; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*).

[114] *See, e.g., Local Competition Second Report and Order*, 11 FCC Rcd at 19472, 19476, 19486, 19490, 19491, ¶¶ 173 n.383, 183 n.403, 205, 214, 216 n.486.

[115] *Further Notice*, 13 FCC Rcd 6104-05, at ¶ 118.

[116] *See* 47 C.F.R. § 64.702(d)(2).

[117] The Commission initially imposed both these requirements on AT&T and GTE in the *Computer II Final Decision*, but lifted the requirements from GTE in the *Computer II Reconsideration Order*. *Computer II Reconsideration Order*, 84 FCC 2d at 72-73, ¶ 66. The Commission imposed the "all carrier" disclosure requirement in the *Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶ 95. After divestiture, the Commission extended the separate subsidiary disclosure requirement to the BOCs insofar as they are providing information services in accordance with the structural separation requirements of *Computer II*. *See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, CC Docket 83-115, Report and Order, 95 FCC 2d 1117 (1984) (*BOC Separation Order*), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), *aff'd on reconsideration*, FCC 84-252, 49 Fed. Reg. 26056 (1984) (*BOC Separation Reconsideration*), *aff'd sub nom.* North American Telecommunications Association v. FCC, 772 F.2d 1282 (7th Cir. 1985).

all [information] service . . . vendors to gain access to and utilize and to interact effectively with [the BOCs'] network services or capabilities, to the same extent that [the BOCs' *Computer II* separate affiliate] is able to use and interact with those network services or capabilities."[118] In addition to technical information, the information required includes marketing information, such as "commitments of the carrier with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities."[119] The other component of the *Computer II* network disclosure rules, the all carrier rule, encompasses "all information relating to network design . . . which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network. . . ."[120]

40. In the *Further Notice*, we tentatively concluded that both *Computer II* network disclosure requirements should continue to apply – specifically, that the separate affiliate disclosure rule should continue to apply to BOCs that operate a *Computer II* subsidiary, and that the all carrier rule should continue to apply to all carriers owning basic transmission facilities.[121] We reasoned that the *Computer II* separate subsidiary disclosure rule should continue to apply to the BOCs because the rule encompasses some information, such as marketing information, which falls outside the scope of section 251(c)(5), and because the rule requires disclosure under a more stringent timetable than that required under section 251(c)(5). We based our tentative conclusion that the all carrier rule should be retained on two factors: first, that the rule requires carriers to disclose network changes that affect CPE, whereas our section 251(c)(5) rules require carriers to disclose only information that affects competitive service providers; and second, that the rule applies to all carriers, whereas section 251(c)(5) applies only to incumbent LECs.[122]

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[118] *Computer II Disclosure Order*, 93 FCC 2d at 1237-38, ¶¶ 34-36. This requirement includes information concerning "network design, technical standards, interfaces, or generally, the manner in which interconnected . . . enhanced services will interoperate with [any of the BOCs'] network. The information required includes, but is not limited to, (a) circuit quality (transmission speeds, error rates, bandwidths, equalization characteristics, attenuation, transmission delays, quantization effects, non-linearities etc.); (b) performance specifications for switched systems (connection times, queuing delays, blocking probabilities, etc.); and (c) network protocols (message formats, requirements for synchronizing bits, error detection and correction procedures, signalling procedures, etc.)." *Id.*

[119] *Id.* at 1238, ¶ 37.

[120] 47 C.F.R. § 64.702; *Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶ 95; *see Computer II Disclosure Order*, 93 FCC 2d at 1228, 1238, ¶¶ 6, 38. For both the separate subsidiary disclosure rule and the all-carrier rule, the *Further Notice* discusses the events triggering the public notice requirement, the timing of public notice, and the methods by which public notice should be provided. *Further Notice*, 13 FCC Rcd 6105-07, at ¶ 119.

[121] *Further Notice*, 13 FCC Rcd 6111, at ¶¶ 122-123.

[122] *Id.*

2. *Computer III* Network Disclosure

41. The *Computer III* network information disclosure rules initially were imposed on AT&T and the BOCs in the *Phase I Order* and *Phase II Order*.[123] The Commission later extended the *Computer III* network information disclosure rules and other nondiscrimination safeguards to GTE in the *GTE ONA Order*.[124] Under *Computer III*, the scope of network information that carriers must disclose is adopted from, and identical to, the *Computer II* requirements.[125] Specifically, at the "make/buy" point, AT&T, the BOCs, and GTE must disclose that a network change or network service is under development.[126] The notice itself need not contain the full range of relevant network information, but it must describe the proposed network service with sufficient detail to convey what the new service is and what its capabilities are.[127] The notice must also indicate that the carrier will supply, subject to a nondisclosure agreement, any ISP with the technical information required for the development of compatible information services.[128] Once an entity has entered into a nondisclosure agreement, AT&T, the BOCs, or GTE must provide the full range of relevant information.[129]

42. In the *Further Notice*, we tentatively concluded that the network information disclosure rules for incumbent LECs that the Commission established pursuant to section 251(c)(5) should supersede the disclosure rules established in *Computer III*.[130] We explained that, in our view, the 1996 Act disclosure rules for incumbent LECs are as comprehensive, if

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[123] *See Computer III Phase I Order*, 104 FCC 2d 958 (1986); *Computer III Phase II Order*, 2 FCC Rcd 3072 (1987).

[124] *See GTE ONA Order*, 9 FCC Rcd 4922 (1994).

[125] *See Computer III Phase I Order*, 104 FCC 2d at 1085, ¶ 253 n.298. Other *Computer III* requirements differ from the *Computer II* requirements. The events triggering the *Computer III* public notice requirement, the timing of public notice, and the methods by which public notice should be provided are recounted in the *Further Notice*, 13 FCC Rcd at 6107-6109, ¶ 120.

[126] Under *Computer II*, the "make/buy" point is when the BOC or an affiliate decides, in reliance on previously undisclosed information, to produce itself or to procure from a non-affiliated company any product, whether it be hardware or software, the design of which either affects the network interface or relies on the network interface. *See Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60. The definitions of the term used in the *Computer III* rules and the rules stemming from the 1996 were adapted from, and closely resemble, the *Computer II* definition of the term. *See* Computer III Phase I Order, 104 FCC 2d at 1084, ¶ 253; 47 C.F.R. 51. 331(b).

[127] *Id.*

[128] *Id.*

[129] The full range of network information that must be disclosed is defined in the *Computer II Disclosure Order*, 93 FCC 2d at 1236-1238, ¶¶ 31-38.

[130] *Further Notice*, 13 FCC Rcd at 6111, ¶ 122.

not more so, than the *Computer III* disclosure rules.[131] We invited parties who disagreed to explain why, in light of the section 251(c)(5) rules, all or some aspects of the *Computer III* disclosure rules might still be needed.

3. Section 251(c)(5) Network Disclosure Rules

43. The Commission promulgated the rules implementing the section 251(c)(5) network disclosure requirements in the *Local Competition Second Report and Order*.[132] The section 251(c)(5) network disclosure requirements apply to all incumbent LECs, as the term is defined in section 251(h) of the Act.[133] Under the Commission's regulations, incumbent LECs are required to disclose, at a minimum, "complete information about network design, technical standards and planned changes to the network."[134] The requirements are triggered when an incumbent LEC makes a decision to implement a network change that affects "competing service providers' performance or ability to provide service; or otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged."[135] The timing requirements for public notice under section 251(c)(5) were adopted, with modifications, from the timing requirements for public notice under the *Computer III* regime.[136] Incumbent LECs must disclose planned network changes at the make/buy point,[137] but at least twelve months before

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[131] *Id.*; *See Local Competition Second Report and Order*, 11 FCC Rcd at 19486, ¶ 205 ("The disclosure obligations imposed by section 251(c)(5) are broader than those adopted in the Computer III proceeding.").

[132] *Local Competition Second Report and Order*, 11 FCC Rcd at 19468-19508, ¶¶ 165-260 (Part IV).

[133] *See* 47 U.S.C. § 251(h).

[134] *Local Competition Second Report and Order*, 11 FCC Rcd at 19479, ¶ 188. Public notice of planned network changes, at a minimum, consists of: (1) the carrier's name and address; (2) the name and telephone number of a contact person who can supply additional information regarding the planned changes; (3) the implementation date of the planned changes; (4) the location (s) at which the changes will occur; (5) a description of the type of changes planned (including, but not limited to, references to technical specifications, protocols, and standards regarding transmission, signalling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and (6) a description of the reasonably foreseeable impact of the planned changes. 47 C.F.R. § 51.327; *Local Competition Second Report and Order*, 11 FCC Rcd at 19479, ¶ 188.

[135] *Local Competition Second Report and Order*, 11 FCC Rcd at 19476, ¶ 182; *see also* 47 C.F.R. § 51.325. Examples of network changes that would trigger the section 251(c)(5) public disclosure obligations include, but are not limited to: changes that affect (1) transmission; (2) signalling standards; (3) call routing; (4) network configuration; (5) logical elements; (6) electronic interfaces; (7) data elements; and (8) transactions that support ordering, provisioning, maintenance, and billing.

[136] 47 C.F.R. § 51.331; *Local Competition Second Report and Order*, 11 FCC Rcd at 19491, ¶ 216.

[137] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19491, ¶ 216 n.486.

implementation of the change.[138] If the planned changes can be implemented within six months of the make/buy point, then the public notice may be provided less than six months before implementation, so long as additional requirements set forth in section 51.333 of the Commission's rules are met. An incumbent LEC may fulfill its network disclosure obligations by filing a public notice with the Commission, or by providing public notice through industry fora or publications, or on the incumbent LEC's own publicly accessible Internet sites.[139]

B. DISCUSSION

44. As we discuss in detail below, we adopt our tentative conclusion that the network disclosure rules adopted pursuant to section 251(c)(5) supersede the *Computer III* disclosure rules. In addition, we remove the *Computer II* network disclosure rules that affect BOCs providing information services through a *Computer II* separate subsidiary. Finally, we eliminate the *Computer II* all carrier rule, but we preserve in our section 51 rules the requirement that incumbent LECs must disclose network changes that could affect the manner in which CPE is attached to the interstate network.

1. *Computer III* Network Disclosure Rules

45. We conclude that we should eliminate the *Computer III* network disclosure rules. Among commenters that addressed the issue, our tentative decision to retire the *Computer III* rules elicited unanimous support. Commenters agreed with our analysis that the network disclosure rules established pursuant to section 251(c)(5) generally duplicate or exceed the rules established under *Computer III*.[140] We agree with commenters who noted that the section 251(c)(5) rules apply not only to the BOCs and GTE, but to all other incumbent LECs as well, and that the triggering event for section 251's disclosure obligation

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[138] 47 C.F.R. § 51.331(a); *Local Competition Second Report and Order*, 11 FCC Rcd at 19490-91, ¶¶ 214-215.

[139] If an incumbent LEC chooses either of the latter two methods, it must also file a certification with the Commission that such public notice was given . 47 C.F.R. § 51.329(a)(2); *Local Competition Second Report and Order*, 11 FCC Rcd at 19483, ¶ 198.

[140] AT&T Comments at 17 (The 251(c) regulations are broader and more detailed than the *Computer III* rules); Bell Atlantic Comments at 23 (The network disclosure rules promulgated pursuant to 251(c)(5) are broader and apply to all LECs, so the ONA network disclosure obligations should be discarded); GTE Comments at 22 (Because the *Computer III* rules duplicate or exceed the section 251 rules, the *Computer III* rules should be eliminated); Intermedia Reply at 5 (Section 251(c)(5) requires incumbent LECs to disclose a wide array of technical and other information needed by competitive LECs and others, so the earlier rules are redundant); ITAA Comments at 18 (The Commission should eliminate the *Computer III* disclosure rules in favor of the more comprehensive rules established pursuant to section 251(c)(5)); US WEST Comments at 48 (The Commission is right in saying that the new rules for incumbent LECs are as extensive, if not more so, than the *Computer III* rules). We note that the *Computer III* disclosure requirements exceed those of section 251(c)(5) rules only in that the *Computer III* rules also apply to AT&T, but we reserve our discussion of interexchange carrier network disclosure for our discussion of the *Computer II* all-carrier rule, at ¶¶ 44-46, *infra*.

already includes the make/buy point applicable under *Computer III*.[141] Accordingly, we agree with commenters that the section 251(c)(5) rules have rendered the *Computer III* network disclosure rules redundant.

2. *Computer II* Network Disclosure Rules

46. As stated above, in the *Further Notice* we identified two *Computer II* requirements that exceed the rules adopted pursuant to section 251(c)(5), the separate subsidiary rule and the all carrier rule.[142] We address the separate subsidiary rule first.[143]

a. The Separate Subsidiary Rule

47. In the *Further Notice*, we recognized that some BOCs may be providing certain intraLATA information services through a *Computer II* subsidiary, rather than on an integrated basis under the Commission's *Computer III* rules. We noted that the *Computer II* separate subsidiary disclosure rule required disclosure under a more stringent timetable than the section 251(c)(5) rules, and encompassed certain information not required by the section 251(c)(5) rules, and on that basis we tentatively concluded that the *Computer II* separate subsidiary disclosure rule should continue to apply in such cases.[144] ITAA agreed with our reasoning.[145] Other commenters, however, question the continuing utility of any disclosure rules other than the requirements that stem from the 1996 Act.[146] Based on the record before us and after careful reevaluation, we conclude that maintaining the *Computer II* separate subsidiary network information disclosure rules is no longer necessary. As we explained

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[141] AT&T Comments at 17; GTE Comments at 22. In addition, US WEST remarks that the new rules allow BOCs to use a short term disclosure process in those instances where they "have the ability to deploy a new interface on an expedited basis." US WEST Comments at 48.

[142] *Further Notice*, 13 FCC Rcd 6111, at ¶ 123.

[143] The separate subsidiary disclosure rule requires, *inter alia*, disclosure of marketing information which includes "information which relates to commitments of the [BOC] with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities." *Computer II Disclosure Order*, 93 FCC 2d at 1238, ¶ 37. Disclosure under the *Computer II* separate affiliate network disclosure requirement must be made to information service competitors at the same time such information is directly disclosed to the BOC's separate affiliate or, in the case of BOC disclosures to third parties for the benefit of the BOC's separate affiliate, disclosure must take place at a "make/buy" point that is more strict than the "make/buy" point which governs disclosure under section 251(c)(5). *Computer II Final Decision*, 77 FCC 2d at 480, ¶ 246; *Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60; 47 C.F.R. § 51.331.

[144] *Further Notice*, 13 FCC Rcd 6111, at ¶ 123.

[145] ITAA Comments at 18.

[146] *See generally*, AT&T Comments at 16-19 (Network disclosure rules established under section 251(c) should be found to supersede the Commission's prior network disclosure rules, because section 251(c)(5) is broader and more detailed than the previous rules); Intermedia Reply at 4 (Under biennial review, the Commission should find that its rules implementing section 251(c)(5) supersede existing network disclosure rules).

above when we discussed CEI requirements for BOCs providing intraLATA information services through separate section 272 and 274 affiliates, we believe that the protection from discriminatory interconnection afforded by structural separation generally exceeds that provided by non-structural safeguards alone. It follows that a BOC that uses a *Computer II* separate affiliate should not be subject to more stringent network disclosure obligations than a BOC that offers such services on an integrated basis under the Commission's *Computer III* rules. Moreover, Congress has instructed us to repeal or modify any regulation we determine to be "no longer necessary in the public interest."[147] Because we find that it is no longer necessary to retain the separate subsidiary disclosure rule, we remove it.[148]

b. The All Carrier Rule

48. The other two instances where the *Computer II* requirements exceed the rules adopted pursuant to section 251(c)(5) concern the all carrier rule.[149] We first consider the element of the rule that requires disclosure by all facilities-based carriers. We conclude that disclosure of network information by carriers other than incumbent LECs is "no longer necessary in the public interest as a result of meaningful competition between providers . . . ."[150] We agree with AT&T that, because no single carrier now dominates the interexchange market, no interexchange carrier (IXC) has the incentive or the ability to gain an unfair advantage by withholding network information from ISPs.[151] We also find that no new entrants into the local exchange market possess individual market power. Because IXCs and competitive LECs currently lack individual market power, they also lack the incentive to create incompatible network interfaces for existing services in order to leverage that power

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[147] 47 U.S.C. § 161(a)(2); *Further Notice*, 13 FCC Rcd at 6046, ¶ 6.

[148] We effect the removal of the separate subsidiary rule by aligning our Part 64 disclosure requirements with those set forth in §§ 51.325-335 of our rules, so that, as a practical matter, the network disclosure rules for BOCs offering services through a *Computer II* separate subsidiary are now identical to those of a BOC offering such services on an integrated basis, and of incumbent LECs generally. *See* Appendix B.

[149] First, the all carrier rule requires disclosure not only by incumbent LECs, but also by all facilities-based carriers, and second, the all carrier rule extends carriers' disclosure obligations to CPE. 47 C.F.R §§ 51.325(a) and 64.702(d)(2) ("all information relating to network design . . . which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network . . . ."). *See also Further Notice*, 13 FCC Rcd 6111, at ¶ 123.

[150] 47 U.S.C. § 161(A)(2).

[151] AT&T Comments at 19-20; AT&T Reply at 10. The Commission has determined that the interexchange telecommunications market is substantially competitive, and that AT&T lacks individual market power in the interstate, domestic, and interexchange telecommunications market. *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20741-43, ¶¶ 21-22 (1996) (*Tariff Forbearance Order*), *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. filed Feb. 13, 1997); *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3278-3279, 3288, 3347 ¶¶ 9, 26, 140-141 (1995) (*AT&T Nondominance Order*); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5887, ¶ 36 (1991) (*First Interexchange Competition Order*).

into upstream or downstream markets.[152] As Intermedia observes, any attempt by an IXC to withhold necessary network information from ISPs would likely result not in unfair advantage, but in a lost sale.[153]

49. Commenters disagreeing with this view do not articulate a compelling reason why regulation is necessary to spur carriers, other than incumbent LECs, to disclose network information. These commenters assert that the all carrier rule provides for disclosure of "important network information in situations not covered by the [section 251] disclosure requirements . . ."[154] and is therefore needed to prevent potential anti-competitive conduct.[155] Bell Atlantic maintains that without the all carrier rule, non-ILEC carriers would not need to disclose their network interfaces, so other carriers would not have the basic interface information they need to interconnect.[156] We find that these comments fail to take into account the normal economic forces of the markets in which IXCs and competitive LECs operate, which pressure them to adopt compatible interfaces. We agree instead with America OnLine that "ISPs remain overwhelmingly dependent on incumbent carriers such as the BOCs for local access to their customers [and that while] it is expected that in a vigorously competitive market competitors will seek to capture market share by any and all means, it is critical to bear in mind that *only the incumbent local exchange carriers* . . . have bottleneck access to essential network components."[157]

50. We conclude that, in contrast to the incumbent LECs, the IXCs and competitive LECs are not likely to gain the individual market power that would allow them profitably to withhold information necessary for interconnection to their networks in order to increase market power in upstream or downstream markets.[158] Thus, we find that regulatory

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[152] This holds for all services for which there are significant network externalities. Katz and Shapiro, "Network Externalities, Competition, and Compatibility," American Economic Review, vol. 75, pp. 424-440, 1985.

[153] Intermedia Reply at 5.

[154] ITAA Comments at 18.

[155] America OnLine Comments at 20.

[156] Bell Atlantic Reply at 9.

[157] America OnLine Comments at 9-10, emphasis added. *See also Further Notice*, 13 FCC Rcd 6103, at ¶ 116 ("[T]he level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs.").

[158] We note that competitive LECs may develop new services and features for which there is no standard industry interface. In such circumstances the competitive LECs may be disinclined to share the new interface specifications with competitors. Allowing competitive LECs to withhold such information is not without potential drawbacks, in as much as innovations may spread more slowly, and certain new services may, for a time, be less competitive. We find, however, that the benefit of an increased incentive to innovate gained by allowing nondominant carriers to not disclose such network changes outweighs these potential costs. In contrast, the incumbent LECs, which possess market power because of their historic monopoly control over local exchange facilities, may be able to leverage their control over those facilities into market power over new or existing services

intervention to ensure network information disclosure is no longer needed for all carriers, but only for incumbent LECs, whose duty to disclose network changes that will affect other service providers is already defined by the section 251(c)(5) network disclosure rules. This conclusion comports with our statutory obligation to eliminate regulations that are no longer necessary due to meaningful economic competition among providers.[159]

51. Although we relieve IXCs and competitive LECs from the specific, routine network information disclosure obligations previously required under the all carrier rule, we emphasize that the Communications Act imposes certain nondiscrimination requirements on all common carriers providing interstate communication services. Among them, section 201 provides that all common carriers have a duty "to establish physical connections with other carriers," and to furnish telecommunications services "upon reasonable request therefor."[160] Applying this provision in the *Non-Accounting Safeguards Order*, the Commission concluded that a BOC would violate section 201 of the Act if it purposely delayed the implementation of an innovative service by denying a competitor's reasonable request for interstate exchange access until its own affiliate was ready to provide competing service.[161] Similarly, we conclude in this proceeding that, if a carrier fails to disclose network information that enables other entities to interconnect to the carrier's basic telecommunications facilities and services in a just and reasonable manner, such action would violate section 201 of the Act.[162] Moreover, all common carriers remain subject to the nondiscrimination requirements in section 202 of the Act.[163] The Commission will not hesitate to use its enforcement authority, including the Accelerated Docket process, to determine whether any carrier's network information disclosure practices are unjust or unreasonable.[164]

52. We further conclude that the *Computer II* network information disclosure rules that extend disclosure requirements to CPE should be retained, but that their application should be limited to incumbent LECs only.[165] The primary purpose of network information disclosure in this context is not to protect intercarrier interconnection, but rather to give

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if they are allowed to modify network interfaces without disclosing those changes to competitors.

[159] 47 U.S.C. § 161(a)(2).

[160] 47 U.S.C. § 201(a). *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 22004.

[161] *Id.*

[162] *Id.*

[163] 47 U.S.C. § 202.

[164] *See Accelerated Docket Order*, CC Docket No. 96-238, Second Report & Order, FCC 98-154 (rel. July 14, 1998) (setting out the requirements for admission to the accelerated docket process).

[165] 47 C.F.R § 64.702(d)(2). In the *Further Notice*, we tentatively concluded that requiring disclosure of network information relating to CPE is an important instance of the *Computer II* rules covering circumstances which the section 251(c)(5) rules do not. No commenter specifically addressed this tentative conclusion.

competitive manufacturers of CPE adequate advance notice when a carrier intends to alter its network in a way that may affect the manner in which CPE is attached to the network. Our concern has been that to the extent that a company with control over underlying transmission facilities also manufactures CPE, that company may have the incentive and ability to leverage its control of those facilities to favor its affiliate's CPE over that of competitive manufacturers.[166] We note that section 201 interconnection and section 202 nondiscrimination obligations also apply in the context of CPE.[167] We conclude that failure to disclose network changes that affect CPE could give incumbent LECs a significant head start in providing fully compatible equipment, and could thereby adversely affect competition in the CPE market.

53. Although we find it necessary to retain a network information disclosure requirement that extends incumbent LECs' disclosure obligations to CPE, we see no point in subjecting incumbent LECs to two separate sets of network information disclosure rules, each with its own timing, triggering, and notice requirements.[168] Instead, we simplify our disclosure requirements to the extent feasible. We therefore remove from our rules the *Computer II* all carrier requirement, and instead extend the disclosure requirements in section 51.325(a) of our rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which CPE is attached to the network. By amending section 51.325(a) of our rules to include a CPE disclosure requirement, we continue to require incumbent LECs to disclose that information.[169]

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

54. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13. First, the Commission no longer requires BOCs to file their Comparably Efficient Interconnection plans with the Commission, and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, the Commission henceforth will require BOCs to (1) post CEI plans on the Internet, and (2) notify the Commission of the posting. These requirements are subject to OMB approval, and the Commission will solicit OMB review and approval as required by the PRA.

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[166] *Computer II Disclosure Order*, 93 FCC 2d at 1236, ¶¶ 31-32.

[167] *See supra* ¶ 51.

[168] The *Computer II* network information disclosure rules are set forth in the *Computer II* proceeding, and in section 64.702(d)(2) of the Commission's rules. *See Computer II Final Decision*, 77 FCC 2d at 480, ¶ 246; *Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶ 95; and the *Computer II Disclosure Order*, 93 FCC 2d at 1228, 1238 ¶¶ 6, 37-38; 47 C.F.R. § 64.702(d)(2). The disclosure rules adopted pursuant to the 1996 Act are codified at 47 C.F.R. §§ 51.325-335.

[169] See Appendix B – Rules. We also note that BOC manufacturing operations continue to be subject to 47 U.S.C. § 273.

55. In addition, the Commission no longer requires IXCs and competitive LECs to disclose information to third parties regarding changes to their networks, as formerly required under section 64.702. Further, the Commission amends section 51.325 to require incumbent LECs to provide third parties with advance notice when a carrier intends to alter its network in a way that may affect the manner in which customer premises equipment is attached to the network. Although the incumbent LECs have long been subject to this requirement under section 64.702, and thus the potential paperwork burden will neither increase, decrease, nor change in any way, moving that rule from section 64.702 to 51.325 is nonetheless considered a modification according to OMB's procedures. This is because section 64.702 predates both the PRA and third party disclosures being subject to the PRA. For that reason, the Commission never accounted for the burden placed on incumbent LECs to comply with that requirement. These requirements, therefore, are subject to OMB approval, and the Commission will solicit OMB review and approval as required by the PRA.

B. Final Regulatory Flexibility Certification

56. The final certification pursuant to the Regulatory Flexibility Act, *see* 5 U.S.C. § 605, is contained in Appendix E.

V. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4, 11, 201-205, 208, 251, 260, and 271-276, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 161, 201-205, 208, 251, 260, and 271-276, that the policies, rules, and requirements set forth herein ARE ADOPTED, and that Parts 51 and 64 of the Commission's rules, 47 C.F.R. Parts 51 and 64, are AMENDED as set forth in Appendix B hereto.

58. IT IS FURTHER ORDERED that, pursuant to 5 U.S.C. § 553(d), the rules, requirements, and amendments set forth herein shall take effect 30 days after the publication of this REPORT AND ORDER in the Federal Register, except for the amendments to Parts 51 and 64 of the Commission's rules, 47 C.F.R. Parts 51 and 64, as set forth in Appendix B hereto, which, pursuant to 44 U.S.C. § 3507(c), shall take effect 70 days after the publication of this REPORT AND ORDER in the Federal Register.

59. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4, and 201-204, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 201-204, the pending requests for approval of CEI plans and CEI plan amendments listed in Appendix C of this REPORT AND ORDER are DISMISSED.

60. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4, and 201-204, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 201-204, the pending petitions for reconsideration or applications for review of orders approving CEI plans listed in Appendix D of this REPORT AND ORDER are DISMISSED WITHOUT PREJUDICE.

61. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A – Commenters

Comments

Ad Hoc Telecommunications Users Committee (Ad Hoc)
AirTouch Paging (Air Touch)
America Online, Inc. (America Online)
Ameritech
AT&T Corp. (AT&T)
Bell Atlantic
BellSouth Corporation (BellSouth)
Community Internet Systems, Inc. (CIS)
GTE
Information Technology Association of America (ITAA)
MCI Telecommunication Corporation (MCI)
SBC Communications, Inc. (SBC)
U.S. General Services Administration (GSA)
U S WEST, Inc. (U S WEST)
WorldCom, Inc. (WorldCom)

Replies

ADT Security Services, Inc. (ADT) Reply
Association of TeleServices International (ATSI) Reply
AT&T Reply
Bell Atlantic Reply
Commercial Internet Exchange Association (CIX) Reply
GSA Reply
Intermedia Communications, Inc. (Intermedia) Reply
SBC Reply
U S WEST Reply
WorldCom Reply

Appendix B – Final Rules

Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51 -- INTERCONNECTION

1. The authority citation for Part 51 continues to read as follows:

Authority: Sections 1-5, 7, 201-05, 207-09, 218, 225-27, 251-54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 207-09, 218, 225-27, 251-54, 271, 332, unless otherwise noted.

2. Sections 51.325(a) is amended by revising paragraphs (1) and (2) and adding a new paragraph (3):

§ 51.325 Notice of network changes; Public notice requirement.

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(1) Will affect a competing service provider's performance or ability to provide service;

(2) Will affect the incumbent LEC's interoperability with other service providers; or

(3) Will affect the manner in which customer premises equipment is attached to the interstate network.

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority for Part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs 201, 218, 226, 228, and 254(k) unless otherwise noted.

4. In the title for Part 64, Subpart G and § 64.702 paragraph (b), remove the words "Communications Common Carriers" and add, in their place, the words "Bell Operating Companies."

5. In § 64.702 paragraph (c), remove the words "Communications Common Carrier" and add, in their place, the words "Bell Operating Company."

6. Section 64.702 is amended by revising the last sentence of paragraph (d)(2) to read as follows:

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

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(d) ***

(2) *** Such information shall be disclosed in compliance with the procedures set forth in 47 CFR 51.325-35.

Appendix C

Pending Requests for Approval of CEI Plans or Amendments

1. Ameritech CEI Plan for Enhanced Services. DA 95-553. Plan filed March 13, 1995.

2. Bell Atlantic Amendment to CEI Plan for Internet Access Service. CCBPol 96-09. Amendment filed May 5, 1997.

3. Southwestern Bell Telephone Company CEI Plan for Internet Support Services. CCBPol 97-05. Plan filed May 22, 1997.

4. US West CEI Plan for Alarm Monitoring. CCBPol 98-02. Plan filed April 24, 1998.

5. BellSouth CEI Plan for Alarm Monitoring. CCBPol 98-03. Plan filed June 12, 1998.

Appendix D

Pending Petitions for Reconsideration or Applications for Review of Orders Approving CEI Plans

1. Reconsideration of Bell Atlantic Internet Access CEI Plan. CCBPol 96-9. Petition for Reconsideration filed July 3, 1996.

2. Applications for Review of Payphone CEI Orders. CC Docket No. 96-28. Applications for Review filed May 5, 1997.

Appendix E

FINAL REGULATORY FLEXIBILITY CERTIFICATION

1. This regulatory flexibility certification supplements our prior certifications and analyses in this proceeding. The Regulatory Flexibility Act (RFA)[170] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[171] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[172] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[173] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[174] The SBA defines small businesses under the category "Telephone Communications, Except Radiotelephone," to be those employing no more than 1,500 persons.[175]

2. The Commission, in the previous *Further Notice of Proposed Rulemaking* (*Further Notice*) in this proceeding,[176] stated in the Initial Regulatory Flexibility Certification that the *Further Notice* pertained to Bell Operating Companies (BOCs), each of which is an affiliate of a Regional Holding Company (RHC), as well as to GTE and AT&T. Because each BOC is dominant in its field of operations and all of the BOCs as well as GTE and AT&T have more than 1,500 employees, we previously certified that the proposed action would not have a significant economic impact on a substantial number of small entities.[177]

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[170] The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Title II of the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).

[171] 5 U.S.C. § 605(b).

[172] *Id.* § 601(6).

[173] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

[174] Small Business Act, 15 U.S.C. § 632.

[175] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4813.

[176] Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of *Computer III* and ONA Safeguards and Requirements, Further Notice of Proposed Rulemaking, CC Docket No. 98-10, 13 FCC Rcd 6040 (1998).

[177] *Further Notice*, 13 FCC Rcd at 6116-17, ¶ ¶ 136-137.

No commenter addressed this previous certification. Subsequently, however, it has become clear that the changes to the Commission's network information disclosure requirements will also affect IXCs and competitive LECs, because the present *Report and Order* removes the network information disclosure requirements from interexchange carriers (IXCs) and competitive local exchange carriers (LECs).[178] At present, because these additional carriers are relieved of any burden associated with the requirements, we continue to foresee no significant economic impact on a substantial number of small entities, and therefore so certify regarding the rules adopted. In addition, this removal of regulation produces no reporting, recordkeeping, or other compliance requirement.

3. The Commission will send a copy of the *Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[179] In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. Finally, the *Report and Order* (or summary thereof) and certification will be published in the Federal Register.[180]

[178] Formerly, all carriers owning basic transmission facilities were required to disclose all information relating to network design which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network. 47 C.F.R. § 64.702. Because IXCs and competitive LECs currently lack individual market power, they also lack the incentive to create incompatible network interfaces for existing services in order to leverage that power into upstream or downstream markets. Normal economic forces of the markets in which IXCs and competitive LECs operate pressure them to adopt compatible interfaces, so application of network disclosure regulations to these entities is no longer needed.

[179] *See* 5 U.S.C. § 801(a)(1)(A).

[180] *See id.* § 605(b).

Statement of Commissioner Harold W. Furchtgott-Roth

Re: *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements

I support adoption of this Report and Order wherein, pursuant to the Commission's duty under Section 11(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sect. 161(b), we have repealed or modified regulations that we have determined to be no longer necessary in the public interest. The regulations at issue here were chosen for repeal or modification as part of the Commission's 1998 Biennial Review, which was conducted pursuant to Section 11(a) of the Act, *Id.* at Sect. 161(a).

However, as thoroughly described in my *Report on Implementation of Section 11 by the Federal Communications Commission* (Dec. 21, 1998), which can be found on the FCC's WWW site at <http://www.fcc.gov/commissioners/furchtgott-roth/reports/sect11.html>, I believe that the 1998 Section 11(a) review was not as thorough as it should have been. I look forward to working with the chairman and other commissioners on the 2000 Biennial Review, planning for which should begin in mid-1999.

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